

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

252011-1740

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Application Number

10/696,183

Filed

October 29, 2003

First Named Inventor

Cheng-Hwa Liu

Art Unit

3623

Examiner

Sterrett, Jonathan G.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Daniel R. McClure/

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Signature

Daniel R. McClure

Typed or printed name

☒ attorney or agent of record.
Registration number 38,962

770-933-9500

Telephone number

☐ attorney or agent acting under 37 CFR 1.34.

May 14, 2010

Date

Registration number if acting under 37 CFR 1.34 _____

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.5. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Cheng-Hwa Liu

Serial No.: 10/696,183

Filed: October 29, 2003

Confirmation No. 6537

Group Art Unit: 3623

Examiner: Sterrett, Jonathan G.

TKHR Ref. 252011-1740

Top-Team Ref. 0503-10178US

For: **Method and Apparatus of Dynamic
Customer Demand Forecasting**

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop – Appeal
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicant appeals the rejections set forth in the FINAL Office Action mailed in this application. Applicant submits that the FINAL Office Action mailed in this application embodies clear error. Therefore, Applicant is requesting a pre-appeal brief review of the rejections. These remarks are provided in support of that request.

Rejections under 35 U.S.C. 103

Claims 1, 4-6, 13, 16-19 and 22-24 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Jenkins et al (Pub. No.: 2002/0188499) in view of Supporting Quick Response Through Scheduling of Make-to-Stock Production/Inventory System (hereinafter Johnson). Among these rejected claims, claims 1, 13, and 19 are independent. Claims 13 and 19 are rejected on the same basis as claim 1. Therefore, remarks are provided regarding to patentability of the amended claim 1.

Claim 1 recites:

1. A computer implemented method of dynamic customer demand forecasting, comprising using a computer to perform the steps of:
the computer inputting at least one forecast rule to estimate orders, and storing the at least one forecast rule into a database, ***wherein the forecast rule comprises a forecast base rule and at least one customer defined rule***;
the computer calculating at least one forecast hit rate, each of which corresponds to a forecast rule, and storing the at least one forecast hit rate into the database;
the computer selecting a highest hit rate from the forecast hit rate stored in the database;
the computer designating the forecast rule corresponding to the highest hit rate as a target rule, and storing the target rule into the database; and
the computer providing the target rule to a capacity allocation model that is implemented in a manufacturing-control computer for allocating capacity in a manufacturing method.

(*Emphasis added*). Claim 1 patently defines over the cited art for at least the reasons that the cited art fails to disclose the features emphasized above. In this regard, Jenkins does not teach 'a forecast rule comprising a forecast base rule and at least one customer defined rule'.

The Office Action (pages 3-4) states that 'the rule of Jenkins is a forecast adjustment rule because it adjusts the forecast to account for actual orders because the orders in the schedule are still estimated based on the rule (*i.e.*, the transition of forecast orders to be actual ones)'.

According to Jenkins and the Examiner's interpretation of Jenkins, the so-called Jenkins' rule is the 'transition of forecast orders to be actual ones'. According to Jenkins, this rule simply determines a new forecast by subtracting existing orders from an old forecast. This rule is predetermined by a manufacturer. Jenkins does not provide a hint of 'a forecast rule comprising a forecast base rule and at least one customer defined rule'. For at least this reason, the rejection of claim 1 should be overturned.

In addition, Jenkins does not teach a plurality of forecast rules to be designated from. According to Jenkins, the so-called Jenkins' rule is the 'transition of forecast orders to be actual ones'. This rule is the only rule to determine a new forecast. Regardless of whether this rule is accurate or not, there is no other candidate rule.

Therefore, Jenkins fails to teach the step of 'the computer selecting a highest hit rate from the forecast hit rate stored in the database' and 'the computer designating the forecast rule corresponding to the highest hit rate as a target rule, and storing the target rule into the database'.

The Office Action (pages 6-7) alleged that Jenkins discloses a method of 'dynamic customer demand forecasting' (see Jenkins, paragraph [0002], lines 1-2). Applicant respectfully disagrees.

According to Jenkins, what is taught is 'a system and method for *ensuring manufacturing order fulfillment*' and 'a system and method for *responding to supply conflicts*, such as unexpected delays in production, by *rerouting and reapplying resources*'(see paragraph [0002], *emphasis added*).

Simply stated, Jenkins does not *forecast* demand. On the other hand, Jenkins ensure fulfillment of ***given demands*** – i.e., given manufacturing orders. To one of ordinary skill in the art, ensuring fulfillment of given demands (as disclosed in Jenkins) does not disclose forecasting demands. For at least this additional reason, the rejection of claim 1 should be withdrawn.

The Office Action states that Jenkins discloses "inputting at least one forecast rule to estimate orders" of claim 1. It appears that this statement is based on a word-by-word interpretation of the term 'forecast adjustment rule' and "forecast rule", but ignores the true and contextual meanings of these terms, in light of corresponding description of Jenkins and the claim language of claim 1.

According to claim 1, the input forecast rule is used to estimate orders. On the contrary, the 'forecast adjustment rule' in paragraphs [0032] - [0036] of Jenkins teaches how to adjust the forecast based on achieved orders. Accordingly, in the method of dynamic customer demand forecasting of claim 1, the forecast rule to estimate orders is input, wherein the orders are the subject of forecasting. Based on basic logic, the subject of forecasting (*i.e.*, the order) has not been achieved when the forecast rule to estimate orders is input.

On the contrary, the 'forecast adjustment rule' of Jenkins teaches how to adjust the forecast based on achieved orders. Accordingly, the achieved orders are the basis for the

so-called forecast adjustment. Again, based on basic logic, the basis of forecasting (*i.e.*, the order) has been achieved in order to adjust forecast.

Accordingly, the method of Jenkins is performed in light of given orders, while the method of claim 1 estimates orders before the orders are actually given. As will be understood by one skilled in the art, the 'forecast adjustment rule' of Jenkins is NOT a forecast rule to estimate orders.

Furthermore, Jenkins actually teaches away from claim 1. As described, Jenkins teaches how to adjust the forecast based on given orders, rather than estimating orders based on given forecast rule. The deficiency of Jenkins cannot be cured by combining a forecast hit rate into the teachings of Jenkins.

For the various foregoing reasons, teachings of the cited arts do not suggest the process of determining a target rule from a plurality of forecast rules of the claim 1 to one of ordinary skill in the art. The process of designating, however, is a key feature of claim 1. Accordingly, the rejection of claim 1 should be overturned.

As noted above, independent claims 13 and 19 embody similar features to the defining features of claim 1. Therefore, on the same basis as claim 1, the rejections of claims 13 and 19 should be withdrawn. Insofar as all remaining claims depend from claim 1, claim 13, or claim 19, the rejections of all remaining claims should be overturned for the same reasons. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988).

Examiner's "Response to Arguments"

The FINAL Office Action set forth a response to Applicant's arguments. A principal argument advanced by the Examiner was that the Office Action was permitted to interpret the term "customer defined rule" as being simply a customer order, because the specification did not define this term. Applicant disagrees with this approach. First, such a construction would ignore the plain meaning of the term "rule." Further, the present application does offer construction guidance on this term.

For example, page 2, lines 16-25 state:

Concerning the concept of customer defined rules, United States Patent 6,434,514 discloses a rule based capacity management system for an inter office facility. The invention mainly discloses a computer program for

monitoring specific pieces of equipment in a telecommunications network, including a presentation layer, a data layer, and a business layer. The ***inventive system receives rules from users and utilizes the received rules and the raw data to produce analytical reports.***

Simply stated, a customer order is not consistent with this description, and it is improper to construe a claim term in a manner that is inconsistent with, or repugnant to, the teachings of the specification.

Further, even the Examiner purported that the term “rule” is defined as “a principle or condition that customarily governs behavior.” A customer order would not satisfy this definition.

Simply stated, for the reasons set forth above, the rejections of the FINAL Office Action constitute clear error and the rejections should be overturned.

A credit card authorization is provided herewith to cover the fee associated with the accompanying Notice of Appeal. No additional fee is believed to be due in connection with this submission. If, however, any additional fee is deemed to be payable, you are hereby authorized to charge any such fee to Deposit Account No. 20-0778.

Respectfully submitted,

/Daniel R. McClure/

By:

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